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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

GREG MILLS,)	
)	
Appellant,)	IPC NO. 00-39
)	
vs.)	
)	DECISION AND ORDER ON
IDAHO TRANSPORTATION DEPARTMENT)	PETITION FOR REVIEW
)	
Respondent.)	
_____)	

THIS MATTER CAME FOR HEARING ON THE PETITION FOR REVIEW on July 8, 2002. Petitioner Greg Mills (Mills) was represented by John Whelan, Respondent Idaho Transportation Department (ITD) was represented by Stephen Bywater. The petition for review involves the hearing officer's decision dated July 26, 2001. **WE AFFIRM.**

I.

BACKGROUND AND PRIOR PROCEEDINGS

A. Disciplinary Action

Appellant is a classified state employee subject to the rights, rules, and responsibilities of the Idaho State personnel system. On November 16, 2000, Respondent ITD, acting through Scott Stokes, District Engineer at Transportation

District I, took disciplinary action against Mills based upon evidence of verbal conduct which Mills engaged in during the month of September 2000, which ITD found to be in violation of Idaho Code §§ 67-5309(n)(1) and 67-5309(n)(5), and Idaho Personnel Commission Rules 190.01a and 190.01e.

The disciplinary action, which amounted to a five (5) day suspension without pay, was based upon the results of an investigation conducted by ITD's Bureau of Civil Rights into a complaint made by a female temporary employee, Donna Jones ("Jones"). The report of the investigation was given to District Engineer Scott Stokes, who was the supervisor ultimately responsible for personnel decisions in the district. Mr. Stokes, after review of the report, issued a Notice of Contemplated Action to Mills. Mills and his attorney met with Stokes pursuant to the Notice of Contemplated Action and provided rebuttal information in Mills' defense. After taking the information provided by Mills into account, and considering disciplinary action previously taken in similar cases, Stokes issued a Notice of Disciplinary Action to Mills, dated November 16, 2000, under which Mills was suspended without pay for a period of five (5) days.

B. Facts

In September 2000, Mills was (and still is) employed as a Transportation Technician (TT). In September 2000, Mills was working the "170" maintenance crew at ITD's District 1 office in Hayden, Idaho. The crew Mills worked with was assigned to highway maintenance duties in the area south and east of Coeur d'Alene, Idaho.

There were seven people on the crew with Mills. They consisted of the crew foreman, Judd Reed; a male Transportation Technician Principal (TTP); John Waisanen, the lead worker, a male Transportation Technician Senior (TTS); Greg Mills,

a male TT; Dave Palmer, a male TT; Don Hiatt, a male TT; Bob Holton, a male TT; Dan Silva, a male Transportation Technician Apprentice (TTA); Christy Farr, a female temporary employee; and Donna Jones, a female temporary employee hired in early August 2000. The temporary assignments of Farr and Jones were set to expire in mid-October 2000.

Reed was the supervisor of the crew and was in charge when he was present. In his absence, which was most of the time, John Waisanen was the lead worker of the crew. When both Waisanen and Reed were absent, Mills and/or Palmer acted as lead workers and were usually in charge of the crew.

In late September 2000, Jones was assigned on a short-term basis to work with the Harrison maintenance crew under the supervision of Reed whose duties involved maintenance of highways located several miles south of the Coeur d'Alene area. The onsite supervisor of the crew was Gary Batchelder. While on assignment with the Harrison crew, Jones reported an incident to Batchelder involving conduct of Mills she said had taken place earlier in the month of September. She was not specific as to the exact date on which the conduct took place. Jones stated the conduct involved Mills telling her a "dirty" joke which included references to oral sex and which offended her. Batchelder told her he was going to Boise with Reed and he would inform Reed of the incident. He also told her she should contact the Human Resources person for the district about the incident.

Jones later reported the incident to Jan Addington, Human Resources Specialist for ITD's District 1. Addington contacted the Civil Rights Bureau of the Department and Jacqueline Wilson, the EEO/Civil Rights Officer, was assigned to make an investigation.

Wilson is a trained professional in the area of human resources and civil rights law compliance who has substantial experience in investigating such reports.

Wilson spoke by telephone with Jones on September 29, 2000. Jones reported to Wilson that one morning earlier in September, shortly before the lunch break when the “170” crew was working on cleaning out drainage culverts near the I-90 interstate freeway, Mills called her over to the Caterpillar he was operating as she walked past and told her a joke which involved oral sex, including expressive tongue motions. At the hearing on this matter, Jones testified she was offended by the nature and context of the joke, and interpreted it was directed at her personally.

Wilson traveled to District 1 the next week and conducted an investigation of Jones’ allegations. She interviewed numerous employees, including Batchelder, John Harwood (Reed’s supervisor), Reed, Palmer, Silva, Waisanen, R. Mills, Yvonne Cloyd (a female TT in the design section of ITD’s District 1), Jones, and Sharon Thornton (a female TT in maintenance assigned to another crew). Following her investigation, Wilson filed a report of her findings and statements made to her by persons she interviewed. This report was filed with Karen Sparkman, Chief of the ITD Bureau of Civil Rights, as well as ITD’s attorney. It was this report which was later given to Scott Stokes who ultimately made the decision to discipline Mills.

The undisputed evidence adduced at the hearing in this matter established:

1. That Mills told a joke to Jones at a time when only Mills and Jones were present.
2. That the date of the joke at issue could not be recalled and/or definitely placed by Jones or Mills.

3. That Mills was a fulltime permanent employee of ITD who had worked for the Department for approximately 18 years at the time of the incident.

4. That Mills had a history of good performance reviews and the current matter is Mills' first negative personnel action during his employment by the DOT.

5. That Jones was a temporary employee of ITD, paid on an hourly basis, who had worked for ITD for less than two months at the time of the incident.

6. That prior to the joke incident, Mills was ostensibly in charge of the crew on occasions when Reed and Waisanen were absent and while Jones was a member of the crew.

7. That the joke involved a reference to "ice cream," a "tongue" and either express or implied reference to oral sex.

8. The members of crew "170," including Mills and Jones, routinely used profanity in their speech while in the work environment.

9. That the members of crew "170," including Mills and Jones, told jokes in a group setting while in the work environment, many of which were "dirty jokes." Jones denies having ever told a joke involving sexual innuendo, but all her co-workers testified otherwise. There is no dispute Mills and other members of the crew told jokes in a group setting involving sexual innuendo.

10. That although Jones had the opportunity to report the joke incident at issue to a supervisor (Waisanen) immediately after it happened, she did not report it to any supervisor or to Human Resources until approximately three weeks later.

11. That shortly after the incident, Jones told co-workers Silva, Palmer, and Farr about the joke, and some period of days after the incident Jones complained about

the joke Mills told her to her supervisor Bachelder, to Human Resources Specialist Addington, and the ITD Civil Rights Bureau.

12. That Jones had an opportunity to report the joke to Mills' wife and confront Mills with the incident in front of other crew members the same day it occurred when the crew (except for Farr) and Mrs. Mills lunched together at a restaurant and sat at the same table, but she did not make any mention of the joke to anyone there.

13. That neither Mills nor any other member of the crew complained to any supervisor, Human Resources personnel, or to the ITD Civil Rights Bureau about Jones' conduct in using profanity in her speech while on the crew or about any of the jokes Jones told.

It should be noted all witnesses demonstrated and/or expressed difficulty in recalling the precise wording of the joke and other verbal exchanges. Mills could not recall the exact words of a joke he alleges Jones told him, but recalled his own. Jones reported a different joke to Wilson when she complained about the joke than the one alleged at the hearing before the Hearing Officer. Additionally, witnesses recalled hearing "dirty jokes" by Mills, Jones, and others in the workplace, but could not recall any specific wording or even general content to repeat. While Jones may not recall accurately the precise wording of the joke Mills told, she clearly remembers the gesture that accompanied it in that it was the gesture that was memorable and offensive to her. And, again, Mills hotly contests he made any hand or tongue gestures with the joke.

Mills' understanding of ITD's policy regarding the telling of jokes involving sexual innuendo in the workplace came from a 1989 ITD training session he attended, from which he took away only the concept that he should "ask first" prior to telling a "dirty

joke” to a female. He stated he had always followed that policy and has always asked for permission before he tells a “dirty joke” to a female. However, no other witnesses testified to Mills asking permission before telling “dirty jokes” to female members. Farr, a female member of the crew, testified Mills, who is also her uncle, frequently tells her “dirty jokes,” and doesn’t ask for her permission. She explained “that’s the way he is.” Palmer testified specifically he had never heard Mills ask for permission before telling a “dirty joke.”

At the hearing, Mills acknowledged receiving and signing for a copy of ITD’s current policy on harassment in the workplace in December 1999. He testified he had never read it because it was a stack of documents “about a half inch thick,” and he is dyslexic. In truth, the policy packet actually handed out to him consisted of 11 pages printed on one side only, including a 2 page letter from the director of ITD stressing the importance of the policies. It was acknowledged by his own choice he did not take it home and go over it with his wife, which was his usual practice when he received written materials from ITD. Mills also acknowledges he did not ask any questions of his supervisor or the Human Resources Specialist about the policy. However, he did ask Reed, his supervisor, questions about the violence in the workplace policy which was passed out at the same time, and it was discussed at length among his crew.

Mills claimed Jones set a “tone” for being welcome to jokes involving sexual innuendo. However, there is considerable disagreement in the evidence about specifics in most of Mills’ claims. The witnesses, including Jones herself, do agree Jones, as well as all the other members of the crew, used profanity. Witnesses who were crew members all testified in telling jokes of a sexual nature, and most of them remember

Jones telling “dirty jokes” in a group context. However, none could remember any details whatsoever of any joke Jones told except the statement made in response to a discussion on the high cost of dating. Even there, witnesses offered many different versions of the statement, no two of which agree.

The testimony of Mills, Hiatt, Holton, and Farr all combine to characterize Jones’ behavior amongst the crew as confident and feisty, boastful about her physical appearance and attractiveness, prone to snippy comments, and be able to hold her own in a workplace banter, including jokes, barbs, and jabs, some sexual in nature. The Hearing Officer elaborated in her Findings of Fact, Conclusions of Law, and Preliminary Order that Jones’ demeanor while testifying supported this characterization. However, the Hearing Officer also found there was no evidence of Jones’ being “open” about her life, her boyfriend, or her pride in her appearance that she ever discussed oral sex, sexual practices, or details of sexual relationships. There is also no evidence that Jones “dressed in a provocative manner or that she made improper or suggestive advances towards members of the crew.”

Jones testified after the joke incident she was “very uncomfortable” around Mills due to the joke and Mills’ animosity she received as resulting from her complaints about the joke to Farr and other co-workers and her report of the joke to Human Resources. Most of the witnesses testified to observing tension and/or conflict between Farr and Jones preexisting Jones’ report of the joke incident or having heard reports of such tension or conflict. There was not any significant testimony about tension or conflict between Jones and Mills pre-existing the joke incident. Sometime prior to reporting the joke incident, Jones inquired of Reed about the likely date for the end of her temporary

employment. Sometime after the report, Jones was placed on paid administrative leave while the investigation was pending.

C. Appeal to Personnel Commission.

Mills filed a timely appeal to the IPC on December 1, 2000. The matter was assigned to Hearing Officer Heidi L. Fisher, and the appeal was heard on April 25 and 26, 2001. The Hearing Officer issued her findings and decision on July 26, 2001, holding that ITD had proven by a preponderance of the evidence that Mills' conduct violated ITD's "Harassment in the Workplace" policy, and thus violated Idaho Code § 67-5309(n)(1) and IPC Rule 190.01a, which provide discipline may be imposed for "failure to perform the duties and carry out the obligations imposed by state constitution, state statutes or rules of ITD or the Division of Human Resources and Personnel Commission." The Hearing Officer also found that ITD had proven by a preponderance of the evidence that Mills' conduct was in violation of Idaho Code § 67-5309(n)(5) and IPC Rule 190.01e, which provide discipline may be imposed for "insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department." Therefore, the Hearing Officer upheld ITD's imposition of a five-day suspension without pay.

Mills filed a timely Petition for Review. Mills predominantly challenges the Hearing Officer's determinations of credibility of the witnesses at the hearing and also challenges the Hearing Officer's legal conclusions relating to the issue of "welcome versus unwelcome conduct" and relating to the issue of "severe or pervasive conduct."

II.

ISSUE

Did ITD prove by a preponderance of the evidence that Appellant violated ITD's Policy on Harassment in the Workplace and thus Idaho Code § 67-5309(n)(1) and 67-5309(n)(5) and Idaho Division of Human Resources and Personnel Commission Rules 190.01(a) and 190.01(e)?

III.

STANDARD OF REVIEW

The standard of review on disciplinary appeals to the Commission is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 29.01.01.201.06 [currently IDAPA 15.04.01.201.06] That is, the burden of proof is one the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and IDAPA 28.01.01.190.01 [currently IDAPA 15.04.01.190.01], exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong v. Idaho Department of Welfare, IPC No. 94-03 (February 21, 1996), *aff'd.*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998).

IV.

DISCUSSION

A. Proof of Cause for Discipline.

The question before the Commission is whether ITD established proper cause for Appellant's suspension by a preponderance of the evidence and whether the Hearing Officer's findings of fact and law are supported by substantial competent evidence. These issues are intertwined because they involve issues of credibility and proof.

The Hearing Officer rendered very detailed findings of fact, reviewing evidence introduced in support of Appellant's misconduct. The Hearing Officer evaluated that evidence in light of Appellant's evidence to the contrary. The Hearing Officer determined there was sufficient evidence that Mills violated the ITD "Harassment in the Workplace" policy and in doing so, also violated I.C. § 67-5309(n)(1), 67-5309(n)(5) and Idaho Personnel Commission Rules 190.01a. and 190.01e. Therefore, the Hearing Officer found that proper cause was established to support Appellant's five-day suspension without pay. The Commission finds there is substantial, competent evidence to support the findings of fact that are crucial to the Hearing Officer's decision.

In his Petition for Review and thoroughly discussed in briefing on the matter, Mills claims there was not sufficient evidence to find he made a tongue or hand gesture accompanying the joke he told Jones. No one witnessed the joke besides Jones and Mills. Mills testified he did not make any tongue movement or hand gestures. Jones says he did. Batchelder, Palmer, Farr and Jones in their statements to Wilson all mentioned some form of tongue and/or hand gestures associated with Jones' complaints about the telling of the joke. He also set forth evidence that Jones set a tone

on the crew that she was open and amenable to sexual innuendo and would not be offended by it. Other witnesses agreed she used profanity. Certain witnesses testified Jones told dirty jokes in a group context, but no one remembered any details except with respect to the discussion of the high cost of dating. Versions as to what was said in that discussion were varied and the Hearing Officer found neither Jones' nor Mills' versions of that incident to be credible.

The Hearing Officer found that from the context and circumstances of the telling of the joke and the evidence presented, Mills' claim that he did not use tongue or hand gestures in the telling of the joke at issue was not credible. The Hearing Officer also found both Mills' and Jones' versions of the wording of the joke, when punctuated by the wiggling/licking tongue and hand gesture, take on a lewd, obscene quality.

Also, while the Hearing Officer observed Jones' demeanor while testifying at the hearing supported the confident, feisty, boastful characterization Mills and the other witnesses testified to, the Hearing Officer found evidence did not persuade her that Jones, by her speech and conduct with the crew, created an atmosphere that would lead a reasonable person to believe a joke, involving a lewd, obscene gesture and sexual innuendo related to oral sex, and told to her by a male in a "one-on-one" situation, would be welcomed by her.

From the evidence presented and from the context and circumstances surrounding the telling of the joke, the Hearing Officer did not find Mills' claim that he asked and received Jones' permission to tell her a dirty joke was credible. No witnesses, besides Mills, testified he ever asked permission before telling a dirty joke.

In fact, Farr, his niece, testified he frequently tells her “dirty jokes” and doesn’t ask for permission. “That’s the way he is”, she testified.

Finally, although more extensive training by ITD in Harassment in the Workplace may be useful (given the nature of the typical ‘road crew’ work environment), the Commission does not find the training provided was inadequate. Mills was given materials on ITD’s Harassment in the Workplace policy and had an opportunity to read them (or have them read to him) and ask questions. He admittedly did neither.

B. Credibility of Witnesses

An issue central to this discussion is that of credibility. This case has a significant “he said, she said” flavor. The Commission has previously held that credibility issues are within the province of the Hearing Officer.

Where credibility of witnesses is an issue, the Commission will usually rely on the determination of the hearing officer who was in a position to judge the credibility and relative credibility of the witnesses.

Wikse v. Dep’t of Health and Welfare, IPC No. 96-12 (1998).

This approach has been upheld by the Idaho Court of Appeals that stated:

[W]here credibility is crucial and where first-hand exposure to the witnesses may strongly affect the outcome, we think the Personnel commission should not override the hearing officer’s impressions unless it makes a cogent explanation of its reasons for doing so.

Dep’t of Health and Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

In this instance, the Hearing Officer, who had the benefit of the parties’ witnesses’ appearance and testimony before her, made factual determinations regarding weight and credibility of the testimony and witnesses, in conjunction with the exhibits and briefs which make up the record in this case. The Hearing Officer rendered

detailed findings of fact, carefully reviewing the evidence introduced by both sides. Appellant has failed to provide any meaningful reason why the Commission should disregard the factual findings of the Hearing Officer, particularly given that determinations of credibility were so instrumental.

C. Violation of ITD's Policy on Harassment in the Workplace

ITD has alleged Mills' conduct was in violation of Idaho Code § 67-5309(n)(1), and Idaho Personnel Commission Rule 190.01.a., which provide discipline may be imposed for: "Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the Department [ITD], or the Division of Human Resources and Personnel Commission."

ITD has also alleged Mills' conduct was in violation of Idaho Code § 67-5309(n)(5), and Idaho Personnel Commission Rule 190.01.e., which provide discipline may be imposed for: "Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the Department [ITD]."

ITD has established Board Policy B-18-10 and Administrative Policy A-18-10 regarding "Harassment in the Workplace." Said policies create a duty and obligation of ITD employees to not engage in conduct which constitutes harassment in the workplace and also operate to define certain conduct that is unbecoming a state employee, is detrimental to good order and discipline.

Harassing conduct is defined under Administrative Policy A-18-10 in pertinent part as follows:

"Harassment is any conduct that . . . creates an . . . offensive working environment through . . . verbal communications including . . . jokes Additionally, sexual harassment is also specifically prohibited and defined as unwelcome . . . verbal . . . conduct of a sexual nature when: . . . the sexual conduct has the . . . effect of . . . creating an . . . offensive work

environment. Examples of sexual harassment include, but are not limited to: . . . Unwelcome comments, innuendoes, jokes . . . of a sexual nature Obscene gestures . . . Unwelcome words or comments with sexual . . . meanings”

Based on the record produced in this case, the Hearing Officer found the joke which Mills communicated to Jones was, by its nature and in the circumstances it was told, subjectively offensive to Jones and created an offensive work environment for Jones. Additionally, the Hearing Officer found the joke told by Mills to Jones was, by its nature and in the circumstances it was told, a verbal communication accompanied by a gesture that a reasonable female in Jones’ position and/or a reasonable person in Jones’ circumstances would have found offensive. The Hearing Officer also found the joke to be subjectively unwelcome to Jones by its nature and in the circumstances it was told. The joke constituted a verbal communication accompanied by a gesture a reasonable woman in the position of Jones and/or a reasonable person in Jones’ circumstances would have found unwelcome. Further, the Hearing Officer found the words or conduct of Jones on the crew did not constitute an express or implicit indication on her part that a reasonable person would take as an indication that verbal conduct accompanied by a gesture such as the joke Mills told would be welcome to her in the circumstances it was told.

Having made these findings, the Hearing Officer, applying and interpreting Administrative Policy A-18-10, concluded Mills had violated ITD’s policy on Harassment in the Workplace. There is substantial and competent evidence to support the Hearing Officer’s findings and the Hearing Officer’s interpretation of Administrative Policy A-18-10 as applied to her factual findings leads to a conclusion that Mills violated the same.

Appellant disagrees and would have the Personnel Commission apply Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, (Title VII) to this case. However, this case does not involve a claim by an injured party under Title VII. The IPC is not entertaining the question whether Appellant's behavior supports a federal claim under Title VII on Jones' behalf. The IPC only entertains the question whether the ITD has proven by a preponderance of the evidence that Mills' behavior warranted disciplinary action under Idaho law and Rules of the Idaho Personnel Commission.

In fact, Title VII, court decisions construing and applying Title VII, while providing useful guidance and interpretation of the ITD policy and review of ITD's disciplinary action of Mills are not directly applicable or dispositive. The level of behavior required to constitute actionable discrimination and sexual harassment under Title VII and that which invokes a violation of ITD's policy are not the same. Under ITD policy, an employee's conduct toward another employee may be offensive and sexually harassing without being abusive or hostile; offensive may become abusive or hostile by virtue of frequency, severity, and pervasiveness.

Employers such as ITD have not only the right but also the responsibility to intervene and address discriminatory, harassing behavior when reported before it becomes serious enough to be actionable under Title VII. Therefore, although the language of the ITD policy on sexual harassment mirrors the language of Title VII in some respects, the concepts must be viewed from the perspective of the restrictions that an employer can and must place upon employee conduct in order to prevent Title VII causes of action from arising in the employee's workplace. An employer cannot be limited from taking preventive disciplinary action against an employee for conduct which

violates standards of appropriate behavior (such as those set out in Administrative Policy A-18-10) because the conduct has not yet risen to a level of seriousness or pervasiveness which would give the harassed employee a valid cause of action under Title VII.

ITD's policy prohibits conduct on the part of its employees that "creates an . . . offensive working environment through . . . verbal communications, including . . . jokes." Prohibition in this part of the policy does not reference a requirement that the communications be "unwelcome" but refers to any verbal conduct that creates an offensive work environment. While the courts in Title VII context may require an employee who has been subjected to such conduct to establish that the conduct was sufficiently severe or pervasive to constitute a "hostile or abusive work environment," ITD policy, as it relates to the offending employee, contains no such limitations or requirements. Appellant's arguments to this effect are without merit.

Instead it is apparent that upon consideration of all the evidence, ITD has shown by a preponderance of credible evidence that Mills violated the "Harassment in the Workplace" policy and thus violated the provisions of Idaho Code §§ 67-5309(n)(1), 67-5309(n)(5) and Idaho Personnel Commission Rules 190.01.a. and 190.01.e. Mills' conduct fell below the standard of behavior reasonably expected by his employer in violation of § 67-5309(n)(1) and Rule 190.01a. Mills' behavior also exposed ITD to a potential claim from Jones for a Title VII claim, whether or not she has pursued it. It is clearly "conduct which is detrimental to good order and discipline in the Department" in violation of § 67-5309(n)(5) and Rule 190.01e.

V.

CONCLUSION

For the reasons stated above, the Hearing Officer's determination that Mills was properly disciplined is AFFIRMED.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this ____ day of _____, 2002.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

Mike Brassey, Commission Chair

Ken Wieneke, Commissioner

Don Miller, Commissioner

Pete Black, Commissioner

Clarisse Maxwell, Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DECISION AND ORDER ON PETITION FOR REVIEW in Mills v. Idaho Transportation Department, IPC No. 00-39, was delivered to the following parties by the method stated below on the ____ day of August, 2002.

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